Crl.A. 174/2003
BEFORE
THE HON'BLE MR JUSTICE P.G.AGARWAL

Heard Mr.B.D.Konwar, learned counsel for the appellant and Mr.P. C.Gayan, learned Public Prosecutor, Assam.

The appellant Md Nekbaba Ali has been convicted by the learned S essions Judge, Sivasagar in Sessions Case No.2(S-S)/2002 for offence under Secti on 366 IPC for kidnapping one Ashia Begum, a minor girl with intent to compel he r to marry against her will. The appellant was sentenced to undergo rigorous imp risonment for two years and to pay fine of Rs.2000/-, in default in payment of f ine, to undergo further imprisonment for two months. Hence, the present appeal.

During trial, the prosecution examined as many as 8 witnesses. T he entire prosecution case rests on the testimony of the alleged victim Ashia Be gum (PW-6), who claimed that while she was in her aunt's place, she was forcibly taken into an auto rickshaw and had sexual violated her and later on marriage w as performed before Kazi and subsequently she was recovered by the police on the basis of the FIR filed by her father. The victim girl claimed her to be 12 year s of age at the time of occurrence, although no birth certificate or school cert ificate was produced in support of the age of the victim. PW-7 Dr.Ananda Mohan D as, on the basis of ossification test opined that the girl was in between 16/17 years of age. The medical evidence is not of much help to the prosecution as we know that the result of ossification test may vary by two years on either side.

Learned counsel for the appellant has submitted that this is a c ase of voluntary elopement, as the elopement was objected to by the father of th e victim, the same has resulted in the present case. It is also submitted that t he alleged victim in her statement under Section 164 Cr.P.C. as well as statemen t under Section 161 Cr.P.C. claimed her to 20 years of age and stated that she h ad voluntarily went with the accused. However, the victim ultimately taken a U-t urn while deposing before the Court. We also find that the victim PW-6 admittedl y in her earlier statements made in favour of the accused. However, she claimed that the above statements were given by her as tutored by the mother of the accu sed. So far the statement under Section 161 Cr.P.C. is concerned, there may be s ome doubt, but while making statement before the Magistrate there is nothing for her to make false statement. Moreover, an witness who admits giving false evide nce on oath is not a reliable witness as she may lie again. On consideration of the evidence on record, we hold that the testimony of PW-6 is not at all reliabl e.

In view of the above, the appeal succeeds. The impugned judgment and order of conviction and sentence is set aside. Accused Md Nekbaba Ali is ac quitted. The accused is on bail, therefore, he need not surrender on his bail bo nd.

Send down the record.